

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12174 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

RAJNIKANT SUKHDEVBHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 12174 of 2003
MR BC DAVE for Petitioner No. 1
MR RM CHAUHAN Ld. AGP for Respondent No. 1-3
-

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 03/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Ahmedabad city on

29.4.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds placed on record and served upon the petitioner reveal that the detaining authority took into consideration the material on two aspects, firstly, registration of crime against the petitioner on 27.4.2003 under sec. 66(1)(B), 65E, 81 and 116B of the Bombay Prohibition Act and two in-camera statements of the witnesses recorded by the proposing authority on 27.4.2003 and verified by the detaining authority on 28.4.2003 revealing the incidents of 25.3.2003 and 5.4.2003. From the above material, the order came to be passed which is impugned in this petition.

Ld. advocate Mr BC Dave for the petitioner and ld. AGP Mr Chauhan for the respondents were heard at length. Affidavit in reply is filed by the detaining authority as placed on record by Ld.AGP is also taken into consideration.

Out of various contentions raised on behalf of the petitioner and controverted by ld. AGP, it appears that this matter can be disposed of on the ground whether the detaining authority applied its mind to the vital aspects of the matter. It is apparent from the grounds served upon the petitioner that when order came to be passed and served upon the petitioner, he was on police remand. In this respect, the detaining authority came to the conclusion that on remand period being over, the petitioner was likely to be entrusted to the judicial custody and on filing proper bail application, he was likely to be released on bail and was likely to continue his illegal activity. While going through the material, it is found that there was no material at all before the detaining authority to come to this conclusion. The facts of this case, therefore, are covered by a decision of the Apex court in the matter of Amrutlal and other vs. Union Government through Secretary, Ministry of Finance and others, as reported in AIR 2000 SC 3675. The order, therefore, is required to be quashed on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 29.4.2003 by the Police Commissioner, Ahmedabad city, under the PASA Act against the petitioner is quashed and set aside. The petitioner

is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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